

J. B. SCHAFFER

IBLA 81-461

Decided September 9, 1982

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring the Oscar Creek Mining Company mining claim abandoned and void.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation -- Mining Claims: Relocation

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the fact that the amended location notice references the original location notice.

APPEARANCES: Gene L. Brown, Esq., Grants Pass, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

J. B. Schaffer has appealed from the February 24, 1981, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Oscar Creek Mining Company mining claim abandoned and void for failure to file timely a copy of the notice of location pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

On appeal, appellant states that in 1876 a claim was located and recorded which was described as the Oscar Gulch claim and that in 1948 the Oscar Gulch mining claim was relocated and designated as the Oscar Creek Mining Company claim. Appellant further states that this is the same claim and that in 1956 amended location notices for the claim were filed renaming the claim the Carson Claims Nos. 1 and 2. <sup>1/</sup> Finally, appellant states that location notices for the Carson claims were properly recorded with BLM and that the Carson claims cover the same area as the Oscar Gulch claim of 1876 and the Oscar Creek Mining Company relocation of 1948.

The records disclose that Oscar Gulch mining claim, also known as the Carson Placer, was located April 1, 1876, and recorded at page 90 of volume 3 of the miscellaneous mining records of Josephine County, Oregon, on April 5, 1876. On July 9, 1948, a notice of location was recorded for the Oscar Creek Mining Company mining claim which expressly recited that it was a relocation of the Oscar Gulch (Carson Placer) claim located in 1876. In 1957, appellant, pursuant to section 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1976), filed a verified statement asserting surface rights to the Carson Placer (Oscar Gulch) and Oscar Creek Mining Company mining claims whose respective dates of location were April 1, 1876, and July 9, 1948. On March 25, 1959, appellant recorded with the county recorder's office amended notices of location wherein the notice of location for the Oscar Gulch or Carson Placer mining claim was amended to describe the Carson Claims Nos. 1 and 2. These amended notices of location were subsequently recorded with BLM under section 314 of FLPMA and assigned serial numbers OR MC 19285 and OR MC 19286, respectively. The amended notices of location make no reference to the relocation of the Oscar Creek Mining Company mining claim of July 9, 1948.

The BLM decision stated in part:

There is nothing in our records showing that the Oscar Creek Mining Co. mining claim identified above was timely recorded in this office under the Act of October 21, 1976. The claim is therefore conclusively deemed abandoned and void, and any rights of the claimant to any of the surface resources are extinguished. [Footnote omitted.]

BLM's decision was based on the provisions of section 314(b), of FLPMA, 43 U.S.C. § 1744(b) (1976). These provisions are embodied in Departmental regulations at 43 CFR 3833.1-2(a):

(a) The owner of an unpatented mining claim \* \* \* located on or before October 21, 1976, on Federal lands \* \* \* shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

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<sup>1/</sup> Copies of the amended location notices in the files disclose they were dated and recorded with the county recorder's office in March of 1959 rather than 1956.

After a diligent search of its records, BLM reported that no filing had been made within the period set forth above which would satisfy the requirements of the applicable regulation or statute.

[1] A relocation of a mining claim is by provision of statute an adverse claim to the original location authorized where the owner or owners of the claim as originally located have failed to perform assessment work, 30 U.S.C. § 28 (1976); R. Gail Tibbetts, 43 IBLA 210, 216, 86 I.D. 538, 541 (1979). There is an indication in the record that the 1948 relocation was just such an adverse claim, having been relocated after the failure to perform assessment work on the claim as originally located. Accordingly, the apparent failure to record the relocated claim under section 314 of FLPMA would support a finding under the statute that it is abandoned and void. However, it appears from the record in the verified statement proceeding that appellant claims ownership by purchase of both the claim as originally located in 1876 and the claim as relocated in 1948. Although the amended location notices recorded by appellant expressly reference the original 1876 location, the intervening relocation of the adverse claim from which appellant derives his title would preclude relation back of appellant's amended claim to the 1876 location. See R. Gail Tibbetts, supra, at 217-18, 86 I.D. at 542. Thus, the 1959 amended location must be construed as an amendment of the claim as relocated in 1948. Recording of the amended location of the claim under section 314 of FLPMA establishes compliance with the FLPMA recordation requirements for the claim since the original and amended notices of location must be construed together. R. Gail Tibbetts, supra, at 220, 86 I.D. at 543. Accordingly, the decision appealed from voiding that claim was in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

